



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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June 30, 2015

Mr. Rick Beach
115 S. Main St.
Wingate, IN 47994

Re: Formal Complaint 15-FC-154; Alleged Violation of the Access to Public Records Act by the Wingate Town Council

Dear Mr. Beach,

This advisory opinion is in response to your formal complaint alleging the Wingate Town Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* the Council has responded to your complaint via attorney Mr. Stuart K. Weliever, Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaints received by the Office of the Public Access Counselor on May 4 and 18, 2015.

BACKGROUND

Your complaints, dated April 30 and May 18, 2015, alleged several access to records issues. On March 16, 2015 the town marshal visited you at your home and at that time you verbally requested from him a copy of the town ordinances, 75 pages in all. From the complaint, it appears your request was not made in the office of the proper agency or by telephone, however, the marshal attempted to comply with it. You said he left a note with the town Clerk-Treasurer and you did not receive a response.

On April 14, 2015, you verbally asked the Town Council at a council meeting for a copy of the ordinance. You were told that a copy of the ordinances would cost \$75, or \$1 per page.

On April 30, 2015, you filed a complaint with the Public Access Counselor alleging the fees the town wanted for the ordinances were too high and that you had tried to visit the town offices on several occasions, only to find the door locked. It should be noted that some of those dates were weekend dates, and some were past normal business hours for typical government agencies. However, on many occasions, you say you visited during what are normal business hours for most governmental agencies and the doors were

locked. It should also be noted Wingate is a very small town, with just a few hundred residents.

On May 12, 2015, you stated you requested the records in person and by writing, apparently to the town council during a meeting and you were told your request was void, but no reason was given. This was after you were told the cost would be \$75 or \$1 per page. The town responded that it does have an ordinance requiring \$1 per page, but realizes it is pre-empted by APRA.

On May 18, 2015, you filed another complaint with the Public Access Counselor alleging again that the fees were too high and that the council and town officials had not responded to your request in time.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. Wingate Town Council is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Council’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

Three issues can be addressed here. First, according to statute, Ind. Code § 5-14-3-9, verbal requests or requests which are not mailed or faxed to an agency you seek records from should be made in person at the office of the agency or by phone. The office you sought records from was the office of the Wingate Clerk-Treasurer. The Clerk-Treasurer and the town board at first offered to provide you with the records. Later you said the town board said your request was void, but did not give a reason. The Council’s response indicates a willingness to respond to your request whether the exact formalities of the APRA were followed.

Second, the town offices appeared to be closed when you tried to visit them during “business hours.” Statute provides an agency should allow the public to inspect and copy records during that agency’s business hours. This is not aware of what hours the Clerk-Treasurer kept. Previous public access counselors have said an agency does not have to keep specific hours, per se, but should allow the public time to inspect and copy records. From your complaint it appeared the Clerk-Treasurer was willing to allow you to inspect or copy the record and to make arrangements to do so. The Clerk-Treasurer should allow you time to inspect and copy the record during reasonable hours and you should be able to work out an agreement to do so. The statute does not appear to be violated.

Third, the \$1 per page copying fee does indeed exceed state statute. While the town can set a fee schedule for copying documents, according to Ind. Code § 5-14-3-8, the town may not charge in excess of \$.10 per black and white page or the actual cost of copying

the document. The actual cost includes the cost of paper and using the copy machine, but not labor. The Council, in its response says you can have a copy of the ordinances at \$.10 per page.

My recommendation is that the town and/or the Town Council or Clerk-Treasurer makes certain you have access to inspect and copy the documents at a rate of no more than \$.10 per copy. Additionally, the ordinance setting the fee schedule at \$1.00 per page should be repealed.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Stuart K. Weliever, Esq.